

82-2065

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JUN 21 1983

ALEXANDER L. STEVAS,

CLERK

NO. _____

In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

JOHN G. RUST,

Petitioner,

vs.

JAMES M. RUVOLO, INDIVIDUALLY AND
AS CHAIRMAN, DEMOCRATIC PARTY OF
LUCAS COUNTY, OHIO AND DEMOCRATIC
PARTY OF LUCAS COUNTY, OHIO, A
POLITICAL ORGANIZATION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE OHIO SUPREME COURT

JOHN G. RUST
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Toledo, Ohio 43604
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QUESTION PRESENTED FOR REVIEW

1. In an action by an unendorsed, but duly certified, candidate for the Democratic Party's nomination for U.S. Congress from the 9th Congressional District, in the State Primary Election, against the Local Democrat County Party and Chairman, does the announcement and implementation by the Party Chairman of a Policy and Rule denying all unendorsed candidates the right to campaign and speak, at the main Political meetings and functions of the Democrat County Party and its chartered and controlled Party Clubs, so as to cause the unendorsed candidates at a substantial number of the meetings to be treated as "Political Out Casts", "Political Lepers", with whom good Party Democrats should not speak, constitute legal grounds

showing sufficient State Action and a substantial denial of the rights of Freedom of Speech, and Free Political Association, assuming that such announced Policies effectively deny to the unendorsed candidates the right to campaign effectively at the meetings following the policy, and with many other Democrats who look at the unendorsed candidates as persons, by reason of the rule, not to be talked to, nor dealt with?

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CERTIFICATE AND PROOF OF SERVICE

Three copies of this Petition for
a Writ of Certiorari were mailed by
first class mail to the following
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In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

NO. _____

JOHN G. RUST,

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vs.

JAMES M. RUVOLO, INDIVIDUALLY AND
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PARTY OF LUCAS COUNTY, OHIO, A
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TO THE OHIO SUPREME COURT

OPINIONS BELOW

None of the opinions below have been reported.

The decision of the Ohio Supreme Court dismissing the appeal and holding that no substantial constitutional question was involved, is found in the Appendix herein, Page 1a, and the same Court's decision denying Petitioner's Motion to Certify is in the Appendix Page 3a. The opinion of the Lucas County, Ohio Court of Appeals, affirming the Trial Court's granting of the Motion to Dismiss is found in the Appendix herein at Page 7a; and the Court of Appeals decision at Page 5a, and the Trial Court decision and opinion of the Court of Common Pleas, Lucas County, Ohio is found herein at Page 17a.

STATEMENT OF JURISDICTIONAL GROUNDS

Jurisdiction of this Court is timely invoked by filing within 90 days this Petition For a Writ of Certiorari to the Decision of March 23, 1983, denying Petitioner's Motion to Certify, and denying that any substantial constitutional questions were involved. This decision and filed entry terminated the case in the Ohio Supreme Court, and the case was then remanded to the Lucas County, Ohio, Court of Appeals.

The statute giving this Court jurisdiction to review the Ohio Supreme Court's decision is 28 U.S.C.A. Par. 1257.

CONSTITUTIONAL PROVISIONS AND STATUTES

Amendment I to U.S. Constitution

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assembly, and to petition the Government for a redress of grievances."

Pages Revised Ohio
Code, Annotated,
Appendix, P. 363

Amendment IV, Section 1, to U.S.

Constitution

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal

protection of the laws."

Pages Ohio Revised
Code, Annotated,
Appendix, P. 364.

The relevant Ohio Statutes are too voluminous to reproduce here, but are found in Page's Ohio Revised Code, Annotated, Title 35.

Of particular relevance are Chapter 3515; Primaries; Nominations; and Chapter 3517; Campaigns; Political Parties.

STATEMENT OF THE CASE

This action was filed on May 24, 1982 in the Court of Common Pleas, Lucas County, Ohio, with the same parties shown on the cover, in an attempt by this Counsel, then a duly certified but unendorsed candidate to be the Democratic Nominee for the 9th Congressional District of Ohio, to be accorded the right to campaign and to speak at the campaign meetings of the Lucas County Democratic Party, and of its officially licensed clubs, as was accorded the endorsed candidate. Respondent James M. Ruvolo, then the Chairman, and the Democratic Party of Lucas County, Ohio, had announced, and were carrying out a policy, which in effect prohibited any unendorsed candidate from speaking at the club and party meetings, which were

the principal campaign functions in the Primary Election of June 8, 1982. The Complaint in Par. 4 stated in part:

"4. At some of the meetings of the said Democratic Clubs and area organizations of the Lucas County Democratic Party, due to the intercession of long-time Democratic friends of Plaintiff Rust, or due to the expressed wish of the group or decision of the Chairperson, involved, Plaintiff Rust has been allowed to speak, and on those occasions was able effectively and strongly to present his case and candidacy, and was well and favorably received. Plaintiff Rust was then able effectively to speak and get his message across at 6 of the club meetings between April 28th and May 22nd, 1982, and was denied the right to speak in the same period at 10 meetings of the Democratic clubs.

5. At 2 of the said 10 meetings of the Lucas County Democratic clubs, Plaintiff, although presenting himself in a polite manner, was abruptly and summarily ordered to leave, and was not allowed to stay, nor to distribute any campaign literature. In practically all of the

said area club meetings when Plaintiff was denied the right to speak, Plaintiff was addressed and spoken of, and to, in a hostile, adverse, critical manner as though he were a "Political Leper", who should be shunned and avoided. The result of such remarks by the chairpersons, each of whom stated they were carrying out the express orders and policies of Chairman Ruvolo, the Lucas County Democratic Party, was that Plaintiff was characterized as a "Political Outcast", as some kind of a bad or evil person, with whom no good Democrat should even talk."

The Complaint also alleged an effective and unconstitutional denial of rights under the U.S. Constitution, stating in Par. 6 as follows:

"6. Further, the denial of the right to participate in the Democratic process of giving one's views, and stating his or her case in support of one's candidacy, has in this election an effect far reaching and adverse to Plaintiff, and if not stopped, will certainly and definitely handicap and hurt Plaintiff in his right

and effort to communicate his candidacy to the members of his party. The Democrats and others attending these club and organization meetings are frequently leaders and activists who exert a strong and significant influence among Democrats in this election. All the actions, denial of Democratic rights, denial of Constitutional and lawful rights of Freedom of Speech and the right to participate as a candidate, and the right of Freedom of Speech of Democrats to hear, and become informed, of the Plaintiff's views and candidacy, are substantial, significant, and Defendants and the various Democratic clubs and organizations will definitely and certainly continue to deny Plaintiff and Democrats who have a right to hear and be informed of Plaintiff's candidacy, and Plaintiff and Democrats generally will be irreparably harmed, damaged, and denied the full and free rights of a free, Democratic election, and full participation in the Democratic Party and process. Further, said denials of the right to speak, and of the right of Democrats to hear and be informed, also has worked in the past, and will work in the

future, to deny Plaintiff the right to be received and considered as a candidate with whom it is legitimate and proper to talk to. In short, the adverse effects of such a dictatorial policy result in the Democrats in this election being asked to "Rubber stamp" the endorsement of the Party Chairman Ruvolo, whereas the age-old principles of the Democratic Party call for a full, free, and meaningful exchange of views and questions between candidates."

The Complaint also alleged state action through the Ohio Revised Code Statutes, Chapter 3517, giving approval to the Democrat and Republican Parties, and using them to certify Party members, and requiring a candidate to provide a Petition duly signed by Party Members. The Primary Elections are held for State, City, and Federal Offices each June.

In the Trial Court, in granting the Motion to Dismiss on May 26, 1982,

the Trial Judge in his Decision, 17a
of the Appendix, at page 21a stated in
part:

"Plaintiff claims that
Defendants have denied him
his constitutional rights
to free association and
speech.",

and held that Plaintiff Rust:

"...has not been deprived of
his constitutional rights of
free speech of assembly."

In Petitioner's Appeal to the Court
of Appeals, Lucas County, Ohio, the
Petitioner claimed a violation of his
constitutional rights as guaranteed by
the First Amendment and 14th Amendment,
Assignment of Error, Part C reading as
follows:

"BY DENYING THE PLAINTIFF
ACCESS TO DEMOCRATIC CLUB
MEETINGS, THE DEFENDANT
DENIED THE PLAINTIFF HIS
RIGHT TO FREE SPEECH, AND THE
RIGHT OF THOSE PRESENT TO
HEAR, AS GUARANTEED BY THE
FIRST AMENDMENT."

And also at page 10 of Petitioner's
Brief and Assignment of Errors in the
Lucas County Court of Appeals:

"Both the Ohio and the United
States Constitutions guarantee
the right of free speech.
OHIO CONST. art.I, §11; U.S.
CONST. Amend.I. This right
is guaranteed because it is
essential to the operation
of a free government, Williams
v. Rhodes, 393 U.S.23(1968);
16 A Am. Jur 2d Constitutional
Law §497(1966). "In a republic
where the people are sovereign,
the ability of the citizenry,
to make informed choices
among candidates for office is
essential." Buckley v. Valeo,
424 U.S. 1, 14-15(1976). Con-
sequently, any limitation of
this right, except in very
narrow circumstances, is
unconstitutional."

Petitioner invoked the 14th Amend-
ment protections at page 13 of the
Court of Appeals Brief, as follows:

"The defendant has alleged that
the court has no right to
adjudicate this case because it
involves the workings of a
political party. However, this

is clearly not the case when a party has infringed on a person's constitutional rights. Smith v. Allwright, 321 U.S. 649(1944). Ripon Society, Inc. v. National Republican Party, 525 F2d 565(D.C. Cir. 1975). Smith, as previously discussed, held that a political party may not discriminate against blacks, so as to deny them their right to vote. In Ripon, the court stated that "the internal workings of a political party (are) squarely within the protection of the First Amendment." Ripon Society, Inc., v. National Republican Party, 525 F 2d 567, 586 (D.C.Cir.1976). Therefore, while a court will generally refrain from reviewing the action of a political party, it should intervene when constitutional rights are involved."

The Lucas County Court of Appeals recognized, but rejected, this Petitioner's claim that his constitutional rights had been denied, and the Court of Appeals Opinion, at page 10a of the Appendix herein, stated as follows:

"On May 26, 1982, the trial court, finding that appellant had not been deprived of his constitutional rights of free speech and assembly and that the matter was patently political, granted appellees' motion to dismiss.

From that judgment, appellant appeals, presenting the following assignment of error:

"The Trial Court committed reversible error in granting defendant's Motion to Dismiss because Plaintiff's complaint does not state a claim on which relief may be granted."

Appellant contends that the trial court erred in dismissing appellant's complaint for the reason that said complaint did state a valid claim for relief from the violation of appellant's rights of free speech and assembly."

The Lucas County Court of Appeals in effect held that the Courts could not take jurisdiction over a Political matter, as had the Trial Court, stating in part, as follows, as shown at Page 15a of the Appendix herein:

"Finally, we note that we do not find that appellees' conduct constitutes the requisite "State action", essential to appellant's claim, in that there is neither a sufficient nexus between the challenged action and the State nor any claim of invidious discrimination affecting participation in the electoral process. See Ripon Society, Inc., supra, at 574-76. Further, compare Moose Lodge No. 107 v. Irvis (1972), 407 U.S. 163; Smith v. Allwright (1944), 321 U.S. 649.

For the foregoing reasons, we find appellant's assignment of error not well taken."

In Petitioner's filing in the Ohio Supreme Court, entitled "Appellant's Memorandum in Support of Claimed Jurisdiction", Petitioner proposed and raised the Constitutional issues as follows:

At Page 3:

"ARGUMENT
PROPOSITION OF LAW NUMBER 1

UNDER THE PROVISIONS OF THE CONSTITUTIONS OF BOTH THE NATIONAL PARTY, THE DEMOCRATIC PARTY OF THE UNITED STATES, AND THE STATE PARTY, THE OHIO DEMOCRATIC PARTY CONSTITUTION AND BYLAWS, ALL DULY CERTIFIED CANDIDATES FOR NOMINATION IN THE STATE AND FEDERAL DEMOCRATIC PRIMARY ELECTION, REGARDLESS OF WHETHER ENDORSED BY THE PARTY OR NOT, HAVE A RIGHT PROTECTED BY THE COURTS, TO SPEAK AT THE MEETINGS OF THE CLUBS AND ORGANIZATIONS CHARTERED AND RECOGNIZED BY THE DEMOCRATIC PARTY OF LUCAS COUNTY, OHIO; AND ANY DIRECTIVE OR ORDER DENYING THE RIGHT OF AN UNENDORSED BUT CERTIFIED CANDIDATE TO PARTICIPATE IN THE SAME FASHION ACCORDED ENDORSED CANDIDATES, WILL, ON APPLICATION TO A COURT OF EQUITY, BE ENJOINED, AND WILL BE DECLARED OF NO FORCE NOR EFFECT."

At page 6:

"PROPOSITION OF LAW NUMBER II

THE OHIO DEMOCRATIC PARTY, AND THE LOCAL COUNTY PARTIES WHICH ARE FORMED UNDER THE AUTHORITY OF THE STATE PARTY, THROUGH ITS BROAD AND COMPREHENSIVE ACTS AND RESPONSIBILITIES, CONSTITUTES A STATE AGENCY FOR

CONSTITUTIONAL PURPOSES; AND, THEREFORE, THE REQUISITE STATE ACTION IS PRESENT TO INVOKE THE PROTECTIONS OF THE U.S. CONSTITUTION."

At page 9:

"PROPOSITION OF LAW NUMBER III

THE ACTION OF THE LUCAS COUNTY DEMOCRATIC PARTY THROUGH ITS CHAIRMAN OF NOT ALLOWING UNENDORSED BUT DULY CERTIFIED CANDIDATES FOR OFFICE IN THE OHIO PRIMARY ELECTIONS, TO SPEAK AND BE ACCORDED THE SAME RIGHTS AS ARE ACCORDED ENDORSED CANDIDATES FOR PRESENTATION OF THEIR VIEWS AND CANDIDACIES, CONSTITUTES A DENIAL OF RIGHTS GUARANTEED BY THE OHIO AND UNITED STATES CONSTITUTIONS OF FREEDOM OF SPEECH AND POLITICAL ASSOCIATION; AND SUCH RIGHTS WILL BE PROTECTED AND ENFORCED IN THE COURTS."

The Ohio Supreme Court, without opinion, held that no substantial constitutional question existed, Page 1a of Appendix herein, and that Petitioner's Motion to Certify the Record to the Ohio Supreme Court, was denied, Page 3a

of Appendix herein.

Petitioner sought a Declaratory
rights
Judgment of his/and others similarly
situated, his Complaint, Par. 11, D. at
page 7 reading:

"D. To grant a Declaratory
Judgment as to the rights
of Plaintiff, and others
similarly situated, as to
their rights to campaign
and be heard, and the rights
of Democrats to hear and
communicate with duly certi-
fied Democratic candidates
as Plaintiff is;

E. And for such other and
further relief as is proper
at law and in equity."

In the Court of Appeals, each side
stated they desired a Court ruling.
No Court has refused relief on the
expressed ground of mootness. The legal
issues continue so that full and effec-
tive exposition of ideas and positions
may be had and known, now and in the
future.

ARGUMENT

In view of the procedural posture of this case, there should be no doubt that there has been an effective denial of the Petitioner's opportunity to campaign effectively and fully in the past Primary of June 8, 1982. In the Court of Appeals, both sides agreed that a Court Decision was desired, and Petitioner continues to want a Declaratory Judgment, as prayed in Par. 11, D. of his Complaint filed in the Trial Court.

Will the Courts assert Jurisdiction to give full meaning to the rights of freedom of speech, and political association? Is there sufficient State Action through its provision for the Political Parties, and their use in the statutory Primary elections?

OHIO THROUGH ITS STATUTORY PROVISIONS OF UTILIZING THE POLITICAL PARTIES IN ITS PRIMARIES HAS ESTABLISHED SUFFICIENT STATE ACTION TO CALL FOR PROTECTION BY THE COURTS OF RIGHTS UNDER THE U.S. CONSTITUTION.

First of all, this Counsel still has not found any decision anywhere which is a so-called "Cow Case" -- one that stands on all fours with the case at Bar. Therefore, we will cite what we consider to be the closest in relevance.

Throughout this case we have challenged opposing Counsel to cite one case where a Political Party's Action was directly involved in the electoral process, and where the Court denied constitutional protection. We submit that our U.S. Constitution properly construed and applied will strike down any action, by a political party, or by

the State, which involves directly an integral part of the electoral process. "And so", this Court now should give definition and guidance as to what can and cannot be done in this area.

In Williams v. Rhodes, 393 U.S. 23, 21 L.ed.2d 24, this Court declared unconstitutional the overly burdensome requirements of numbers needed by a Political Party to get their candidate on the ballot, and the time limits therein provided. In part this Court then stated as follows:

"393 U.S. 28: (1) Ohio's claim that the political-question doctrine precludes judicial consideration of these cases requires very little discussion. That claim has been rejected in cases of this kind numerous times. It was rejected by the Court unanimously in 1892 in the case of McPherson v. Blacker, 146 US 1, 23-24 36 L. Ed. 869, 873, 13 S.Ct. 3, and more recently it has been squarely

rejected in Baker v. Carr, 369 U.S. 186, 208-237, 7 L.Ed. 2d 668, 680-697, 82 S.Ct. 691 (1962), and in Wesberry v. Sanders, 376 U.S. 1, 5-7, 11 L.Ed. 2d 481, 485-486, 84 S.Ct. 526 (1964). Other cases to the same effect need not now be cited. These cases do raise a justiciable controversy under the Constitution and cannot be relegated to the political arena.

393 U.S. 30: In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification. In the present situation the state laws place burdens on two different, although overlapping, kinds of rights-the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights of course, rank among our most precious freedoms. We have repeatedly held that freedom of association is protected by the First

Amendment. And of course this freedom protected against federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same, protection from infringement by the States. Similarly we have said with reference to the right to vote: "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."

393 U.S. 32 "Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms."

393 U.S. 38 The First Amendment, made applicable to the States by reason of the Fourteenth Amendment, lies at the root of these cases. The right of association is one form of "orderly group activity" (NAACP v. Button, 371 U.S. 415, 430, 9 L.Ed. 2d 405, 416, 83 S.Ct. 328), protected by the First Amendment. The right "to engage in association for the advancement of beliefs and ideas" (NAACP v. Alabama, 357 U.S. 449, 460, 2 L.Ed. 2d 1488,

1498, 78 S.Ct. 1163), is one activity of that nature that has First Amendment protection. As we said in Bates v. Little Rock, 361 U.S. 516, 523, 4 L.Ed. 2d 480, 485, 80 S.Ct. 412, "freedom of association for the purpose of advancing ideas and airing grievances is protected by the Due Process Clause of the Fourteenth Amendment from invasion by the States." And see Louisiana v. NAACP, 366 U.S. 293, 296, 6 L.Ed. 2d 301, 304, 81 S.Ct. 1333. At the root of the present controversy is the right to vote-a "fundamental political right" that is "Preservative of all rights." Yick Wo v. Hopkins, 118 U.S. 356, 370, 30 L.Ed. 220, 226, 6 S.Ct. 1064. The rights of expression and assembly may be "illusory if the right to vote is undermined." Wesberry v. Sanders, 376 U.S. 1, 17, 11 L.Ed. 2d 481, 492, 84 S.Ct. 526."

In Smith v. Allwright, 321 U.S. 649, 88 L.ed. 987, this Court held unconstitutional the Action of the
in Texas
Democratic Party /in excluding Blacks
from voting in its Primary Elections,

stating the Party was for constitutional purposes, an agency of the State. In 321 U.S. at page 663, this Court stated in part:

"We think that this statutory system for the selection of party nominees for inclusion on the general election ballot makes the party which is required to follow these legislative directions an agency of the state in so far as it determines the participants in a primary election. The party takes its character as a state agency from the duties imposed upon it by state statutes; the duties do not become matters of private law because they are performed by a political party."

In Texas and in Ohio, state statutes, Page's Ohio Revised Code Annotated, Chapter 3517, provides for the election of the County Committee which controls, and likewise for the State Controlling Committee. At Primaries a voter must declare his Party to vote in that

Party's Primary.

A case close to the issues at Bar is Abrams v. Reno, U.S.D. Ct., S.D. Florida (1978), 452 F.Supp. 1166, where a Florida Statute which denied a Political Party the right to make endorsements, was held contrary to the First and Fourteenth Amendments of the U.S. Constitution. Petitioner agrees that the Democratic Party should be allowed to make endorsements. But if our Party is not to be dominated and run by "Political Dictators" -- by "One Man Rule" -- however well intentioned -- then a duly certified candidate should be allowed effectively to campaign and speak at all the main campaign functions of the Party and its Clubs. Why not? In the 1982 campaign for the Democratic nomination for

Governor, the candidates, and their representatives, were allowed to speak, since the State had not endorsed Mr. Celeste, Mr. Brown, nor Mr. Sprenger. All went well, and we elected Mr. Celeste.

If a Political Party's right to endorse is an integral and protected constitutional right, so is the right of a certified candidate to speak and campaign.

In 1984, Ohio will doubtlessly endorse Senator Glenn. Does that mean that in the Ohio Primary election, other candidates and their representatives, like Vice-President Mondale, Senators Cranston, Hollings, Hart, and others will not be allowed to speak?

In *Abrams v. Reno*, *supra*, the Court in 452 F.Supp. at page 1170 stated:

"In Buckley v. Valeo- 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659, the Court stated: "the court's decisions in Mills v. Alabama, 384 U.S. 214 (86 S.Ct. 1434,) 46 L.Ed.2d 484 . . . and Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241, (94 S.Ct. 2831,) 41 L.Ed.2d 730 . . ., held that legislative restrictions on advocacy of the election or defeat of political candidates are wholly at odds with the guarantees of the First Amendment."

The Mills and Tornillo cases concern legislative restrictions placed on the media (in Mills, the right of a newspaper to endorse on the day of the election). This difference from the instant case is not material in principle."

Respondents may argue that Petitioner should be denied any and all relief herein, because he did not go before the Party's Screening Committee. A factual response is that the Petitioner called the Party Chairman re Petitioner's running for Congress, and in so many

words Petitioner was told "to go south in a blue coupe". With that response, Petitioner knew any appearance before the Screening Committee would be futile. The Chairman has not denied, at the Hearing on the Motion for Temporary Restraining Order, that no one has ever been endorsed who did not have the approval of the Party Chairman. Also, suppose that 3 well qualified candidates appear before the Screening Committee, and one is endorsed. The other 2 candidates would want, and deserve, the same rights as claimed herein by Petitioner.

In a Congressional Primary Election in Lucas County, under the present domination of the office of the County Chairman, who is elected by the Precinct Committeeman, the present policy makes

an unendorsed candidate a "Political Out Cast" -- "One Beyond the Pale" -- a "Political Leper".

Conformity runs strong in the Party Organization and many Party leaders. The choice of Party endorsements at the Congressional and lower levels can be fairly said historically to have been made by the Party Chairman. He or she hands out jobs, patronage, and other benefits important to Party and Club members.

In a Primary, inside one's own party, one can more freely talk and campaign. Position weaknesses can be ferreted out, and improved, so the successful candidate will have a better chance to win in the general election.

There is validity to the principles of free competition of ideas and people.

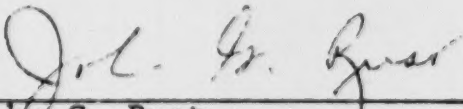
CONCLUSION

Freedom of Speech and an unfettered exchange of ideas are needed and good for the United States, and our great Democratic Party, and all its branches and members.

The relief herein sought is needed now, and in the future.

Wherefore Petitioner requests that this Court issue its Writ of Certiorari to the Ohio Supreme Court, and review and pass upon the Questions Presented for Review appearing at page (i) herein.

Respectfully submitted,



John G. Rust
Attorney and Petitioner
823 Security Building
Toledo, Ohio 43604
Phone AC 419, 243-9191

DATED: June 21, 1983

1a

APPENDIX A

THE SUPREME COURT OF OHIO

NO. 82-1825

C.A. NO. L-82-169

TRIAL COURT NO. CV 82-1277

JOHN G. RUST,

Appellant,

vs.

JAMES M. RUVOLO,

Appellee.

APPEAL FROM THE COURT OF APPEALS

FOR LUCAS COUNTY

1983 TERM

TO WIT: March 9, 1983

FILED: March 23, 1983

This cause, here on appeal as of right from the Court of Appeals for Lucas County, was considered in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte

dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Lucas County for entry.

I, James Wm. Kelly, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and the seal
of the Court this 23rd day
of March, 1983.

/s/ James Wm. Kelly, Clerk

/s/ Sam F. Adkins, Deputy

3a

APPENDIX B

THE SUPREME COURT OF OHIO

NO. 82-1825

C.A. NO. L-82-169

TRIAL COURT NO. CV 82-1277

JOHN G. RUST,

Appellant,

vs.

JAMES M. RUVOLO,

Appellee.

MOTION FOR AN ORDER DIRECTING

THE COURT OF APPEALS

FOR LUCAS COUNTY

TO CERTIFY ITS RECORD

1983 TERM

TO WIT: March 9, 1983

FILED: March 23, 1983

It is ordered by the Court that
this motion is overruled.

COSTS:

Motion Fee, \$20.00 paid by John G.

Rust.

I, James Wm. Kelly, Clerk of the
Supreme Court of Ohio, certify that the
foregoing entry was correctly copied
from the Journal of this Court.

Witness my hand the seal of
the Court this 23rd day of
March, 1983.

/s/ James Wm. Kelly, Clerk

/s/ Sam F. Adkins, Deputy

5a

APPENDIX C

IN THE COURT OF APPEALS
LUCAS COUNTY, OHIO

COURT OF APPEALS NO. L-82-169

TRIAL COURT NO. CV 82-1277

JOHN G. RUST,

Appellant,

vs.

JAMES M. RUVOLO, et al.,

Appellees.

JOURNAL ENTRY

FILED: October 29, 1982

Before: John J. Connors, Jr.,
Presiding Judge, Andy
Douglas, Judge, and
John H. Barber, Judge

Finding the sole assignment of error
not well taken, judgment of the Lucas
County Common Pleas Court is affirmed at
appellant's costs and cause is remanded to
said court for execution of judgment and
assessment of costs. See Opinion by
Douglas, J., on file.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. See also Supp. R. 4, amended 1/1/80.

/s/ John J. Connors, Jr.
Presiding Judge

/s/ Andy Douglas
Judge

/s/ John H. Barber
Judge

APPENDIX D

IN THE COURT OF APPEALS
LUCAS COUNTY, OHIO

COURT OF APPEALS NO. L-82-169

COMMON PLEAS NO. CV 82-1277

JOHN G. RUST,

Plaintiff-Appellant,

vs.

JAMES M. RUVOLO, et al.,

Defendants-Appellees.

OPINION

DECIDED: October 29, 1982

HEADNOTE

A determination by a political party that a candidate for a political office, not endorsed by that party, may not speak at party organized and authorized meetings, is a patently political matter and therefore not justiciable.

Mr. John G. Rust, Pro Se.

Messrs. Jerome Phillips and John A. Harris, III, and Ms. Joan Torzewski,
Attorneys for Appellees.

DOUGLAS, J. This case comes before
this court on appeal from judgment of

the Lucas County Court of Common Pleas, denying appellant's motion for a preliminary injunction and granting appellees' motion to dismiss appellant's complaint.

Appellant, John G. Rust, was an unendorsed candidate for the office of United States Congressman in the June 8, 1982, Democratic primary. During appellant's campaign, he attempted to speak at various Democratic club meetings. In accordance with the provisions of the Lucas County Democratic Party's Constitution and policies, however, the majority of the clubs did not permit appellant to speak at such meetings.

On May 24, 1982, appellant filed a complaint in the Lucas County Court of Common Pleas against appellees, James M. Ruvolo, individually, and as

Chairman of the Democratic Party of Lucas County, Ohio, and the Democratic Party of Lucas County, Ohio. In his complaint, appellant alleged that appellees had instructed the Democratic clubs and organizations to deny appellant and other unendorsed candidates the right to speak at meetings. Appellant sought a temporary restraining order and preliminary injunction, directing appellees to withdraw any such instructions, and further ordering appellees to instruct the organizations to accord unendorsed candidates the same privileges accorded endorsed candidates. Appellant further filed, that same day, a motion for a temporary restraining order.

On May 25, 1982, appellees filed a motion to dismiss appellant's complaint and motion for a temporary

restraining order for failure to state a claim upon which relief could be granted on the ground that the matter in issue involved the internal policies of a political party.

On May 26, 1982, the trial court, finding that appellant had not been deprived of his constitutional rights of free speech and assembly and that the matter was patently political, granted appellees' motion to dismiss.

From that judgment, appellant appeals, presenting the following assignment of error:

"The Trial Court committed reversible error in granting defendant's Motion to Dismiss because plaintiff's complaint does not state a claim on which relief may be granted."

Appellant contends that the trial court erred in dismissing appellant's complaint for the reason that said

complaint did state a valid claim for relief from the violation of appellant's rights of free speech and assembly.

Our review of the record reveals the following pertinent information. Appellant had been an active member of the Democratic Party for a number of years. There is no indication that appellant attempted to institute any change in the party's policies regarding unendorsed candidates during this time. More importantly, the record reveals that appellant did not seek the party's endorsement for his candidacy.

In *Jenkins v. Porter* (1969), 22 Ohio Misc. 48, the Common Pleas Court of Cuyahoga County stated, at 53, that:

"There is no statutory law and no prohibition of any kind which prevents a

political party from endorsing any certified candidate for its choice in any election. Freedom of expression and freedom of endorsement is a constitutional right under the United States Constitution and the Constitution of the state of Ohio. A political party is expected to exercise its obligation and responsibility to scrutinize candidates running for office and determine which candidate or candidates it desires to support. That is their choice and there cannot be any interference from any source so long as their decision was properly exercised."

We find no evidence in the record that appellees violated any rules or regulations applicable to either the endorsement procedure or the subsequent promotion of the endorsed candidate. We further find no evidence that appellant was, in any way, treated differently from other unendorsed candidates. Rather, appellant, having not obtained his party's endorsement, seeks

a judicial mandate entitling him to all the benefits of such endorsement. We concur in the trial court's determination that extending appellant such benefits would ". . . undermine the purpose of political endorsements." As stated in *Ripon Society, Inc. v. National Republican Party* (D.C. Cir., 1975), 525 F. 2d 567, cert. denied 424 U.S. 933, at 585:

"What is important for our purposes is that a party's choice, as among various ways of governing itself, of the one which seems best calculated to strengthen the party and advance its interests, deserves the protection of the Constitution as much if not more than its condemnation. The express constitutional rights of speech and assembly are of slight value indeed if they do not carry with them a concomitant right of political association. Speeches and assemblies are after all not ends in themselves but means to effect change through the political process.

If that is so, there must be a right not only to form political associations but to organize and direct them in the way that will make them most effective."

Further, we concur in the trial court's determination that this matter is patently political and, therefore, not justiciable. In *State, ex rel. McCurdy, v. DeMaioribus* (1967), 9 Ohio App. 2d 280, the Court of Appeals of Cuyahoga County stated, at 281, the following general rule of judicial restraint with respect to disputes involving the internal affairs of political parties:

"The courts of the United States have had a long history of not interfering in the internal affairs of political parties. The reasons for this position taken by the courts are simple. Although political parties have certain public responsibilities, they are basically voluntary associations made up of persons who act together

for various community and party purposes and who are governed in most respects by their own rules and usages."

Finally, we note that we do not find that appellees' conduct constitutes the requisite "State action", essential to appellant's claim, in that there is neither a sufficient nexus between the challenged action and the State nor any claim of invidious discrimination affecting participation in the electoral process. See *Ripon Society, Inc.*, supra, at 574-76. Further, compare *Moose Lodge No. 107 v. Irvis* (1972), 407 U.S. 163; *Smith v. Allwright* (1944), 321 U.S. 649.

For the foregoing reasons, we find appellant's assignment of error not well taken.

On consideration whereof, the court finds substantial justice has

been done the party complaining and judgment of the Lucas County Court of Common Pleas is affirmed.

This cause is remanded to said court for execution of judgment and assessment of costs. Costs to appellant.

JUDGMENT AFFIRMED.

CONNORS, P.J., and BARBER, J., concur.

APPENDIX E

IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

CASE NO. 82-1277

JOHN G. RUST,

Plaintiff,

vs.

JAMES M. RUVOLO, ET AL.,

Defendants.

DECISION

FILED: May 26, 1982

Before the Court are Plaintiff's motion for a temporary restraining order and Defendants' motion to dismiss. At controversy is a policy promulgated by the Democratic Party of Lucas County which has been in force for approximately forty years and wherein provides:

"It is the policy of the Lucas County Democratic Party not to aid or provide a platform for candidates running against endorsed candidates.

In regard to club meetings, these unendorsed candidates are not allowed to be on the club's agenda or speak before the membership. This would constitute aiding a candidate who is running against an endorsed candidates (sic).

This prohibition applies to all Republican and Independent candidates, but also to all Democrats who have chosen to run against endorsed Democrats.

These candidates are:
John Rust....

None of these people should be allowed to speak at a club meeting.

This policy was established to aid any endorsed candidates in their elections. We need to give them our full support and not provide opportunities for their opponents to speak against them."

On February 25, 1982, Plaintiff contacted Defendant James M. Ruvolo as Chairman of the Executive Committee of the Democratic Party to commence his candidacy for the office of United States Congressman for the Ninth

Congressional District of Ohio. Ruvolo responded negatively to Plaintiff's announcement, from which Plaintiff concluded that he would receive no assistance in his campaign.

The Democratic Party in Lucas County has a screening procedure by which they select which candidates, if any, will receive the local party's endorsement. The procedure includes interviews of all persons seeking party endorsement by the Selection and Endorsement Committee. Thereafter, the committee makes a recommendation of a particular candidate for endorsement. If a candidate receives an endorsement he also receives certain benefits with and privileges from the party to aid and assist his campaign. Among the benefits conferred is the right to address men's and women's clubs on political subjects without

having to confront unendorsed opponents. If the screening committee makes no recommendation and the Democratic Party makes no endorsement, then all candidates for that particular office are entitled to speak before Democratic organizations.

Plaintiff herein made no effort to interview with the Selection and Endorsement Committee, nor did he seek the enforcement of the Democratic Party by any other available procedure. Instead, he filed his nominating petitions with the Board of Elections, became certified as a candidate for the office he sought and then attempted to utilize Democratic Clubs as political forums as though he were the endorsed candidate. Apparently the majority of the clubs where he attempted to speak followed party policy and refused him the opportunity. Some clubs permitted him to speak. But

Plaintiff claims that Defendants have denied him his constitutional rights to free association and speech. He further claims that the local policy heretofore stated is repugnant to the national and state charters.

It should be noted that Plaintiff did not follow established procedures to seek endorsement; nor did he, at any time critical, attempt to legislate a change of policy within the local Democratic Party. Rather, having failed to seek the endorsement, he now calls upon this Court to grant him the rights, privileges and benefits of an endorsed candidate.

A cursory review of Plaintiff's citations of applicable law reveal that he has not been deprived of his constitutional rights of free speech of assembly. As stated in Jenkins v.

Porter (1969), 22 Ohio Misc. 48,53:

"There is no statutory law and no prohibitions of any kind which prevents a political party from endorsing any certified candidate for its choice in any election. Freedom of expression and freedom of endorsement is a constitutional right under the United States Constitution and the Constitution of the State of Ohio. A political party is expected to exercise its obligation and responsibility to scrutinize candidates running for offices and determine which candidate or candidates it desires to support. That is their choice and there cannot be any interference from any source so long as their decision was properly exercised."

There is no evidence that the local Democratic Party violated any rules or regulations applicable to the endorsement procedure. Having not obtained endorsement, Plaintiff is not now entitled to speak at club meetings. To extend him that right and to all those

similarly situated would create confusion at meetings and undermine the purpose of political endorsements.

More importantly, this matter is patently political, and Courts have no authority to interfere in the internal affairs of political parties. The Court of Appeals of Cuyahoga County held in State ex rel. McCurdy v. Demaioribus (1969) 9 Ohio App. 2d 280 that courts have a long history of not interfering with internal affairs of political parties. The court stated that parties are basically voluntary associations made up of persons who act together for community and party purposes and who are governed in most respects by their own rules and regulations. More importantly, the parties usually provide their own procedure and tribunals for resolution of their own affairs.

Therefore, I conclude that Plaintiff has failed to establish sufficient facts from which I can find that his rights have been violated. His motion for a preliminary injunction is overruled. Defendants' motion to dismiss is sustained.

Dated: May 26, 1982

/s/ Robert D. Nichols
Judge